

## Table of Contents

<b>CHAPTER 13.....</b>	<b><a href="#">383</a></b>
<b>Environment and Other Transnational Scientific Issues .....</b>	<b><a href="#">383</a></b>
<b>A. LAND AND AIR POLLUTION AND RELATED ISSUES .....</b>	<b><a href="#">383</a></b>
1. Climate Change.....	<a href="#">383</a>
a. General.....	<a href="#">383</a>
b. UN Framework Convention on Climate Change .....	<a href="#">387</a>
c. Green Climate Fund.....	<a href="#">388</a>
d. U.S. Action on Climate Change .....	<a href="#">389</a>
(1) U.S. Climate Action Plan.....	<a href="#">389</a>
(2) E.O. 13653: Preparing the U.S. for impacts of climate change .....	<a href="#">389</a>
e. Launch of Initiative for Sustainable Forest Landscapes .....	<a href="#">390</a>
2. Minamata Convention on Mercury .....	<a href="#">391</a>
3. UNEP .....	<a href="#">392</a>
4. Ozone Depletion .....	<a href="#">394</a>
5. Sustainable Development.....	<a href="#">396</a>
<b>B. PROTECTION OF MARINE ENVIRONMENT AND MARINE CONSERVATION .....</b>	<b><a href="#">398</a></b>
1. Arctic Council.....	<a href="#">398</a>
a. Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic .....	<a href="#">399</a>
b. Kiruna Declaration and “Vision for the Arctic” Statement .....	<a href="#">400</a>
2. Antarctica.....	<a href="#">406</a>
3. Informal Consultative Process on Oceans and Law of the Sea (“ICP”) .....	<a href="#">408</a>
4. Marine Pollution .....	<a href="#">410</a>
a. U.S. implementation of amendments to MARPOL Annex V.....	<a href="#">410</a>
b. Energy Efficiency Design Index Amendments.....	<a href="#">412</a>
c. Amendments to the 1996 Protocol to the London Convention.....	<a href="#">413</a>
5. Fish and Marine Mammals .....	<a href="#">414</a>
a. Transmittal of the amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries .....	<a href="#">414</a>
b. Transmittal of Convention on Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean .....	<a href="#">414</a>
c. Transmittal of Convention on Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean.....	<a href="#">415</a>
d. CITES new framework on introduction from the sea.....	<a href="#">416</a>

<i>e. CITES amendments to include marine species .....</i>	<a href="#"><u>417</u></a>
<i>f. Sea turtle conservation and shrimp imports .....</i>	<a href="#"><u>417</u></a>
<b>C. OTHER CONSERVATION ISSUES .....</b>	<a href="#"><u>418</u></a>
1. Wildlife Trafficking .....	<a href="#"><u>418</u></a>
2. ILC Work on Transboundary Aquifers.....	<a href="#"><u>419</u></a>
<b>Cross references .....</b>	<a href="#"><u>421</u></a>

## CHAPTER 13

### Environment and Other Transnational Scientific Issues

#### A. LAND AND AIR POLLUTION AND RELATED ISSUES

##### 1. Climate Change

###### a. *General*

On October 22, 2013, U.S. Special Envoy for Climate Change Todd Stern addressed a conference on climate change at Chatham House in London. Mr. Stern's remarks on a new global climate agreement are excerpted below and available at <http://iipdigital.usembassy.gov/st/english/texttrans/2013/10/20131022284984.html#axzz2uHN1JDW/>.

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We should ... be well aware that an international agreement is by no means the whole answer. The most important drivers of climate action are countries acting at home. After all, the essential task before us is to transform the energy base of our economies from high to low carbon. Most of this transformation will take place in the private sector, where energy is produced and consumed, but governments need to set the rules of the road, provide the incentives, remove the barriers, fund the R&D, and spur the investment needed to hasten this transformation.

In the United States, President Obama has put his shoulder to the wheel with his new Climate Action Plan, which builds on aggressive measures from the past few years. Last month, for example, EPA issued draft regulations to control carbon pollution for new power plants, and is hard at work preparing regulations for existing plants. The President has also issued landmark rules to double the miles-per-gallon of our vehicle sector. These two sectors—power and transportation—account for some two-thirds of our national emissions. And the President has also issued strong efficiency standards for building appliances, has doubled our use of wind and solar power, and is pursuing a suite of other actions.

But national action will only rise to the level of ambition we need if it takes place within a strong and effective international system. Effective international climate agreements serve three vital purposes. First, they supply the essential confidence countries need to assure them that if they take ambitious action, their partners and competitors will do the same. Second, they send a potent signal to other important actors—sub-national governments, the private sector, civil society, research institutions, international organizations—that the world’s leaders are committed to containing climate change. Third, they prompt countries to take aggressive climate action at home to meet their national pledges.

We have, now, an historic opportunity created by the Durban Platform’s new call for a climate agreement “applicable to all Parties.” Some have said those four words in the Durban negotiating mandate are nothing new in climate diplomacy, but make no mistake, they represented a breakthrough because they mean that we agreed to build a climate regime whose obligations and expectations would apply to everyone. We have had a system, the Kyoto Protocol, where the reverse was true, where real obligations applied only to developed countries, listed in the Framework Convention’s Annex 1. The point of “applicable to all” in the Durban Platform was to say, in effect, that this new agreement would not be Kyoto; that its obligations and expectations would apply to all of us.

What Durban recognized was that Kyoto could not point the way forward in a world where Non-Annex 1 countries (developing countries as listed in 1992) already account for a majority of greenhouse gas emissions and will account for two-thirds of those emissions by 2030.

Our task now is to fashion a new agreement that will be ambitious, effective and durable. And the only way to do that is to make it broadly inclusive, sensitive to the needs and constraints of parties with a wide range of national circumstances and capabilities, and designed to promote increasingly robust action.

Let me talk about certain core elements of such an agreement. First, it will need a supple architecture that integrates flexibility with strength. Some see flexibility as a signal of weakness, but I think just the opposite. We know the agreement must be ambitious; to be ambitious it will have to be inclusive; and to be inclusive it will have to balance the needs and circumstances of a broad range of countries. For such an agreement, a rigid approach is the enemy.

We see flexibility in the new agreement in at least three ways. First, rather than negotiated targets and timetables, we support a structure of nationally determined mitigation commitments, which allow countries to “self-differentiate” by determining the right kind and level of commitment, consistent with their own circumstances and capabilities. We would complement that structure with ideas meant to promote ambition—a consultative or assessment period between an initial and final commitment in which all Parties as well as civil society and analytic bodies would have an opportunity to review and comment on proposed commitments; “clarity” requirements (or expectations) so that commitments can be transparently understood by others; and a requirement (or invitation) to countries to include a short explanation of why they believe their proposed commitment is fair and adequate. This nationally determined structure will only work if countries understand that all have to do their part; that strong action is a favor we do ourselves because we are all profoundly vulnerable to climate change; and that the world will be watching how we measure up.

Second, we need to focus much more on the real power of creating norms and expectations as distinguished from rigid rules. There is certainly a role for rules, standards and

obligations in this agreement. But an agreement that is animated by the progressive development of norms and expectations rather than by the hard edge of law, compliance and penalty has a much better chance of working, being effective and building inclusive, real world ambition.

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Third, we will need to be creative and flexible as we think about the legal character of the agreement. Again, rigidity is a potential roadblock. We all agreed in Durban to develop a new legal agreement, but left open the precise ways in which it would be legal; recall the famous phrase “protocol, another legal instrument, or an agreed outcome with legal force.” Parties are discussing a variety of ideas with regard to which elements of a new agreement would be legally binding and the role that both international and domestic bindingness might play. This discussion is still in its early stages, and I don’t have much to add here. What I would say, though, is to keep our eyes on the prize of creating an ambitious, effective and durable agreement. Insisting that only one way can work, such as an agreement that is internationally legally binding in all respects, could put that prize out of reach.

Now let’s move beyond flexibility. The new agreement will also need to come to terms with differentiation, the issue that has bedeviled climate negotiations more than any other in the past 20 years. I believe there is a way through this thicket, but only if all Parties recognize both what is actually essential in their own position and what is genuinely reasonable in the position of the other side.

Nearly all Parties to the Convention share a conviction that climate change is a serious threat that has to be addressed with vigor and commitment. The difficulty lies in deciding who has to do what and the phrase at the heart of this debate is CBDR—common but differentiated responsibilities and respective capabilities.

In one sense, this phrase has come to embody an ideological narrative of fault and blame, but it also serves a more pragmatic purpose. It is seen as the principle that shields developing countries from climate requirements they fear could constrain their capacity to grow, develop and alleviate poverty.

While we don’t accept the narrative of blame, we do see the concerns that underlie the developing country attachment to CBDR as entirely legitimate. Countries in the midst of the historic project of developing, industrializing and alleviating poverty cannot fairly be asked to embrace obligations that would jeopardize those hopes.

The nationally determined structure of commitments we have already discussed should satisfy this pragmatic purpose, since countries would make their own decisions about what kind of mitigation commitments were appropriate given their own circumstances and capabilities. Moreover, the idea of relying more on norms and expectations should also ease developing country concerns.

The difficulty comes when we consider the Annex 1 and Non-Annex 1 categories created in 1992—in particular, whether those original categories should define the operational content of the agreement. Put another way, are we negotiating a new agreement that has a single operational system differentiated across the spectrum of countries or that has two different systems on relevant issues like mitigation, transparency, accounting – one for developed countries, one for developing.

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In short, there is no real substantive defense for asserting that membership in the 1992 annexes should both (a) define obligations and expectations, and (b) be immutable in a rapidly changing world.

Some nonetheless argue that this result is required because the Durban platform says the new agreement is to be “under the Convention.” Since the annexes were created as part of the Convention, it is alleged that they must never change their composition or their operational character in defining what Parties are supposed to do. But this is specious, since “under the Convention” plainly had no such meaning in the Durban Platform negotiations, and if it had, there never would have been a Durban Platform.

Some also argue that the annexes must be fixed and retain their operational character because Annex 1 countries bear historical responsibility for our climate problem and history doesn’t change. But this claim makes no sense either. First, it misconceives the facts of historical emissions since, based on the well-known MATCH study, commissioned by the UNFCCC, cumulative emissions from developing countries will surpass those of developed countries by 2020. Second, it ignores the fact that history is changing continually in dynamic ways. China, for example, is already the world’s second largest historic emitter. And the world is now emitting as much every decade as all the cumulative emissions that occurred before 1970. Third, it is unwarranted to assign blame to developed countries for emissions before the point at which people realized that those emissions caused harm to the climate system.

So let me sum up on differentiation. Developing country concerns about avoiding climate obligations that could constrain their capacity to develop are entirely legitimate. CBDR is an enduring principle of the Convention and, read properly, should address these developing country concerns. A new agreement must be structured and drafted in a way consistent with those concerns. The annexes can be left alone in their current composition. But they cannot have an operational role of defining obligations and expectations, because doing so is unjustifiable in a rapidly evolving world and would defeat our effort to produce the ambitious, effective and durable agreement that is our mission.

The third broad issue that will profoundly affect our negotiations is financial assistance in its various forms. Here we need a paradigm shift in our thinking, based on a combination of hard realities and enormous opportunity.

To state the obvious, there is no question that we need to provide assistance to many countries that are working to build low-carbon economies and to many countries seeking to build resilience and to adapt to climate impacts. Since 2010, the United States has been providing some \$2.5 billion a year, more than six times more than we provided before the Obama Administration. And we are continuing our vigorous push within the U.S. government for climate funding.

Now the hard reality: no step change in overall levels of public funding from developed countries is likely to come anytime soon. The fiscal reality of the United States and other developed countries is not going to allow it. This is not just a matter of the recent financial crisis; it is structural, based on the huge obligations we face from aging populations and other pressing needs for infrastructure, education, health care and the like. We must and will strive to keep increasing our climate finance, but it is important that all of us see the world as it is.

However, there is also enormous opportunity, if we can take advantage of it. Because a genuine step change in funding can occur in the flow of private capital leveraged by public money or public policy. Some leveraged private investment is already flowing into developing

countries, but we can do so much more to unlock much larger flows. The well of private capital is deep, but we need hard work by developed and developing governments to tap into it.

Once again, to make real progress, we need to elevate practical problem solving above rhetoric and ideology. Lectures about compensation, reparations and the like will produce nothing but antipathy among developed country policy makers and their publics. But we can succeed on this front if we work together.

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**b. *UN Framework Convention on Climate Change***

A U.S. delegation participated in the 19th Conference of the Parties (“COP-19”) of the UN Framework Convention on Climate Change (“FCCC”) in Warsaw, Poland, November 11 to 22, 2013. The primary objective at COP-19 was to lay the groundwork for negotiating a new agreement on climate change that would be applicable to all parties and would be concluded by 2015, as agreed at the COP in Durban in 2011. The work of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (“ADP”) in Warsaw, November 12-23, 2013 is reflected in the agenda, reports, submissions (including the U.S. submission), and other documents available at [http://unfccc.int/meetings/warsaw\\_nov\\_2013/session/7730.php](http://unfccc.int/meetings/warsaw_nov_2013/session/7730.php). The U.S. Submission to the ADP includes the following summary description of the type of agreement envisioned by the United States:

Structurally, we see the agreement as being part of a larger package:

- The agreement itself will contain core provisions that are designed to stand the test of time. The agreement should, all things being equal, be concise. The more concise the agreement is, the easier it will be to negotiate and complete, and the more understandable it will be for domestic decision makers and constituencies.
- We would see somewhat more detail on mitigation and transparency, given their specific nature.
- Like the FCCC, the agreement is likely to contain a mix of provisions that are legally binding and non-legally binding.
- We should not need to revisit the basic structure of the agreement to account for changing circumstances, or when Parties make new mitigation commitments in the future. Therefore, the structure will need to be sufficiently flexible to account for changing circumstances.

Parties’ specific mitigation commitments, contained in a side document (such as a “schedule”), would also be part of the package. Such commitments would be nationally determined by Parties and would have gone through the consultative process that we have outlined (and which we further elaborate below).

The package will also include various COP decisions that either implement elements of the agreement in greater detail, or address issues more

appropriately dealt with through decisions.

COP-19 resulted in the creation of the Warsaw international mechanism for loss and damage associated with climate change impacts. U.N. Doc. FCCC/CP/2013/L.15. The Warsaw international mechanism was established under the Cancun Adaptation Framework and is intended to address loss and damage associated with impacts of climate change in developing countries that are particularly vulnerable to the adverse effects of climate change. Establishing the Warsaw international mechanism on loss and damage under the Cancun Adaptation framework is consistent with the United States view that as a legal and technical matter, loss and damage is a part of adaptation efforts under the Convention, rather than a standalone pillar.

**c. *Green Climate Fund***

At COP-19, the Parties to the FCCC took several steps toward full operation of the Green Climate Fund (“GCF”), a financial mechanism to support projects and programs in developing countries. An independent GCF secretariat was established and the GCF Board selected an executive director of the GCF. Parties provided initial guidance to the GCF. Arrangements between the COP and the GCF were elaborated in an annex to the report of the COP. U.N. Doc. FCCC/CP/2013/10/Add.1. Further information on the GCF is available at

[http://unfccc.int/cooperation\\_and\\_support/financial\\_mechanism/green\\_climate\\_fund/items/5869.php](http://unfccc.int/cooperation_and_support/financial_mechanism/green_climate_fund/items/5869.php).

On October 24, 2013, the U.S. Department of State issued a press statement on efforts to mobilize global climate finance generally, available at [www.state.gov/e/oes/rls/other/2013/215831.htm](http://www.state.gov/e/oes/rls/other/2013/215831.htm), making particular mention of the GCF:

Multilateral development banks (MDBs) and multilateral climate funds are already playing a transformative role in the transition to a low-emission economy and have the potential to do much more. A series of new activities in 2013 has aimed at sharpening the response of the MDBs to the climate finance challenge. High-level representatives of MDBs and donor countries met twice, in April and October, to advance the agenda on leveraging private investment in climate action. The MDBs reported on work in three important areas: (1) the development of guidelines for offering concessional loans; (2) efforts to better engage the private sector; and (3) progress on tracking of their climate finance, especially on measuring private funds leveraged. More structured exchanges among the MDBs, the private sector, and policymakers to advance the climate finance agenda are planned. Meanwhile, the ongoing development of the Green Climate Fund, including its Private Sector Facility, provides an opportunity to promote a paradigm shift and to test new approaches to catalyzing private investment for mitigation and adaptation in developing countries.



**d. U.S. Action on Climate Change**

**(1) U.S. Climate Action Plan**

On June 25, 2013, President Obama announced the U.S. Climate Action Plan. See White House Fact Sheet, available at [www.whitehouse.gov/the-press-office/2013/06/25/fact-sheet-president-obama-s-climate-action-plan](http://www.whitehouse.gov/the-press-office/2013/06/25/fact-sheet-president-obama-s-climate-action-plan). The plan includes a commitment to lead international efforts to address global climate change by, for example, expanding bilateral initiatives with China, India, and other major emitting countries. Secretary Kerry issued a press statement on June 25, 2013 in response to the announcement of the President's Climate Action Plan, available at [www.state.gov/secretary/remarks/2013/06/211124.htm](http://www.state.gov/secretary/remarks/2013/06/211124.htm). Secretary Kerry said:

The President's historic announcement today will send ripples internationally about the United States' commitment to meeting the climate change challenge. Leading the world as the "indispensable nation" demands that we must be the indispensable stewards of the planet. Decisive action at home empowers us to make more progress internationally on a shared challenge.

...

Climate change cannot be solved by one nation alone. The global community must step up. I raise this issue everywhere I travel, in every meeting, and we have already broken new ground by creating the U.S.-China Working Group, where we recently agreed to work together to phase down a class of potent greenhouse gases. Just this past weekend, we launched a Climate Working Group with India that can lead to similar advances. And we are working with partners around the world to craft an ambitious, fair, and durable international climate agreement. Continued pressure and high-level engagement is vital to reduce emissions, transform global energy economies, and help the most vulnerable cope with the effects of climate change. We must use every day to find and take tangible, collaborative steps forward.

**(2) E.O. 13653: Preparing the U.S. for impacts of climate change**

On November 6, 2013, President Obama issued Executive Order 13653, "Preparing the United States for the Impacts of Climate Change." 78 Fed. Reg. 66,819 (Nov. 6, 2013). Among other things, the Order establishes an interagency Council on Climate Preparedness and Resilience and a State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience. The Executive Order directs federal agencies to take a series of steps to make it easier for decision makers at all levels of federal, state, and local government to strengthen resilience to extreme weather events and prepare for other impacts of climate change.

**e. Launch of Initiative for Sustainable Forest Landscapes**

On November 20, 2013, in Warsaw, Poland, the United States joined in the launch of a new partnership, the Initiative for Sustainable Forest Landscapes (“ISFL”). U.S. Special Envoy for Climate Change Todd Stern delivered remarks at the launch, available at [www.state.gov/e/oes/rls/remarks/2013/217781.htm](http://www.state.gov/e/oes/rls/remarks/2013/217781.htm), and excerpted below.

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...[W]e’re proud to be part of the new Initiative for Sustainable Forest Landscapes (“ISFL”). This new partnership between governments and the private sector will help create long-term and lasting incentive structures for more sustainable development. The \$25 million that the United States plans to provide, as part of the more than \$250 million in planned total commitments being announced today. This complements the more than \$1billion in financing for REDD+ the United States has provided since the beginning of the fast start period.

Beyond financing though, we are proud to have been part of a brain trust of partners including the U.K., Norway, and the World Bank, to design this initiative. In fact, many of you will recognize this as the Funding Avoided Deforestation concept we have talked so much about. And of course the Initiative is one of our key contributions to the Tropical Forest Alliance 2020, a key public-private partnership with the goal of reducing deforestation associated with the production of key tropical commodities.

We’re fortunate to have a Secretary of State—and a President—who both feel strongly about the need to act on climate change. The President’s Climate Action Plan highlights the importance of taking action to halt deforestation as one of the priority areas for U.S. engagement internationally, and sustainable landscapes are one of three focal areas for U.S. climate finance.

Secretary Kerry pointed out how important forests, and indeed the whole land sector, are for our atmosphere, for plant and animal biodiversity, and for our collective future. This is true for the United States too—forests cover one-third of our land and supply 80 percent of our fresh water. We share many of the same trade-offs facing developing countries: a growing population places additional demands on resources, and potential economic trade-offs between forest protection and other land uses.

As was the case in the U.S., agricultural expansion continues to be one of the leading drivers of deforestation in developing countries. The challenge is that agriculture is also a major force for economic growth. Over a billion people worldwide work in agriculture, and agricultural markets provide a major source of income for farmers and communities. As demand for food, feed, fiber and fuels continues to grow, the importance of the agricultural sector will only continue to expand. We need to find ways to foster increased agricultural production while continuing to protect standing forests and reducing greenhouse gas emissions.

We very much hope this new Initiative can help break down the myth that we must choose between either development or the environment. The ISFL will help ambitious developing countries move forward toward their climate goals by providing them with resources to implement smarter, more productive forest preservation strategies, and create alternative options.

The combination of public and private sector cooperation in this initiative is new and unique, and recognizes the importance of engaging the private sector as partners, not adversaries,

in the fight against climate change. We know that public sector funding alone is not sufficient to change the structural drivers of deforestation. We must also change the signals provided by the private sector to forest communities.

The ISFL will support the groundwork necessary to implement REDD+ and support sustainable agricultural production through its grants, technical assistance, and purchases of emissions reductions. At the same time, the private sector will create demand for forest-friendly products through their commitments to purchase more sustainable commodities from sustainably managed landscapes. This combination of incentives creates a powerful dynamic, where there is both upfront support for forest stewardship and demand-side pull for forest-friendly products.

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## 2. Minamata Convention on Mercury

On January 19, 2013, after four years of negotiations, the United States and more than one hundred other governments adopted the Minamata Convention, a global agreement to reduce mercury pollution. A January 31, 2013 press statement issued by the State Department's Bureau of Oceans and International Environmental and Scientific Affairs, available at [www.state.gov/e/oes/rls/pr/2013/203651.htm](http://www.state.gov/e/oes/rls/pr/2013/203651.htm), is excerpted below.

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... Mercury warrants global attention due to its long-range atmospheric transport, its persistence in the environment, and its significant negative effect on human health and the environment. Mercury exposure is a major public health threat, particularly for children and women of child-bearing age. Mercury can damage or impair the functioning of nerve tissue and even permanently damage the brain, kidneys, and developing fetus. According to most estimates, global sources contribute at least 70 percent of total U.S. mercury deposition.

The agreement, known as the Minamata Convention on Mercury, calls for the reduction of mercury emissions to the air and a decrease in the use of mercury in products and industrial processes. It will help reduce the supply of mercury by, among other things, ending primary mercury mining. The Convention will ensure environmentally sound storage of mercury and disposal of waste. The agreement also calls on governments to address the use of mercury in small-scale gold mining, which uses and releases large amounts of mercury.

"We are very pleased with the outcome of these negotiations. Transboundary air emissions are a significant global challenge that no single country can solve on its own," said Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs Kerri-Ann Jones. "This agreement is an enormous success that will allow us to work together in coming years with countries around the world to make a meaningful difference in addressing mercury pollution."

The convention will be open for signature at a Diplomatic Conference in Japan in October. The name of the convention pays respect to Minamata, the Japanese city that experienced severe mercury pollution in the mid-20th century. Many local citizens of Minamata

suffered from a neurological syndrome caused by mercury poisoning, which became known as Minamata disease, from consuming contaminated fish and shellfish from Minamata Bay.

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On November 6, 2013, the United States formally joined the Minamata Convention on Mercury, depositing its instrument of acceptance to enable it to become a party to the Convention. A Department of State media note, available at [www.state.gov/r/pa/prs/ps/2013/11/217295.htm](http://www.state.gov/r/pa/prs/ps/2013/11/217295.htm), provides U.S. views on the significance of the Minamata Convention:

The Minamata Convention represents a global step forward to reduce exposure to mercury, a toxic chemical with significant health effects on the brain and nervous system. The United States has already taken significant steps to reduce the amount of mercury we generate and release to the environment, and can implement Convention obligations under existing legislative and regulatory authority. The Minamata Convention complements domestic measures by addressing the transnational nature of the problem.

### 3. UNEP

In December 2012, the UN General Assembly adopted resolution 67/213, establishing universal membership in the UN Environment Programme (“UNEP”) Governing Council and taking other steps to strengthen UNEP. U.N. Doc. A/RES/67/213. Strengthening UNEP was one of the commitments in the outcome document from the UN Conference on Sustainable Development (“Rio+20”) held in 2012. See *Digest 2011* at 422-25 for a discussion of the U.S. submission contributing to the draft outcome document for Rio+20 conveying U.S. views on strengthening UNEP. The United States participated in the first universal session of the UNEP Governing Council in Nairobi, Kenya in February 2013, at which the Governing Council took a decision (27/2) implementing resolution 67/213 and reforming the governance of UNEP in several key ways: mandating a subsidiary body to exercise greater member state control over UNEP agendas and budget; creating a high-level political segment at each meeting; eliminating the Global Ministerial Environmental Forum; and expanding stakeholder participation in UNEP. Judy Garber, Principal Deputy Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, delivered remarks at the session in Nairobi on February 18, 2013, when decision 27/2 was under negotiation. Ms. Garber’s remarks are excerpted below and available at [www.state.gov/e/oes/rls/remarks/2013/205109.htm](http://www.state.gov/e/oes/rls/remarks/2013/205109.htm). On March 13, 2013, the UN General Assembly adopted resolution 67/251, renaming the UNEP Governing Council as the UN Environment Assembly of the UNEP. U.N. Doc. A/RES/67/251.

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The United States has long supported a stronger, more effective UNEP, and we are pleased with the reforms reflected in paragraph 88 of the Rio+20 outcome, which it is now our responsibility to implement. We believe it is essential to UNEP's future that the structural governance issues pertaining to universal membership be resolved at this meeting. Our deliberations on governance are complete, and ongoing governance processes will not contribute to UNEP's essential programmatic work.

We recognize that there are some substantive issues that Member States will need to discuss over the longer-term. These include a more robust substantive agenda for UNEP, the science-policy interface, and capacity building for environment in the context of development. Conversations on these items can take place in the context of UNEP's Strategic Framework and Programme of Work discussions in future years. To ensure transparency and accountability, and to increase the voice of governments in setting UNEP's environmental agenda, we support some key institutional reforms to be decided at this meeting.

First, we believe it vital that UNEP's universal body approve—review and approve—UNEP's Strategic Framework before that framework is transmitted to New York for review. The Strategic Framework is the document that sets UNEP's strategic direction, and forms the foundation for UNEP's Programme of Work. Historically, governments have had limited opportunity to engage in the preparation of this critical document. With a view toward responsiveness to Member States, we believe this needs to change.

Second, we support the creation of a regionally-representative working body, subsidiary to the universal body that will meet once annually to undertake performance and financial reviews and report to the main body on its findings.

This will be an audit body of sorts, which we anticipate will provide final approval for the Programme of Work and Budget before these documents are transmitted to New York in the fall. The main, universal body would also have the opportunity for a final stamp of approval on the Programme of Work, as the GC currently does.

Third, we want a clearer, more defined role for the Committee of Permanent Representatives (CPR) based in Nairobi. The CPR should be empowered to take intersessional decisions at the request of the universal body, and should develop both UNEP's Strategic Framework and Programme of Work and Budget for approval. The CPR's presence in Nairobi and its ongoing work on programmatic issues are essential to inform consideration of the Strategic Framework by the main body and of the Programme of Work and Budget by the subsidiary working body.

UNEP needs to be more efficient and effective. As a part of this, we need to look at the frequency of meetings and their scheduling. To avoid overloading the agenda and increase both meeting impact and Member State input, UNEP main body meetings should take place every two years, as they are currently meant to, with less frequent ministerial sessions.

A fourth key piece is the participation of stakeholders. Their more integral participation is indispensable to increasing UNEP's effectiveness and impact on the ground. We support a mechanism for stakeholder inclusion in UNEP meetings, as well as a portion of the ministerial segments devoted to stakeholder-government dialogue.

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#### 4. Ozone Depletion

As discussed in *Digest 2012* at 434, a discussion group was formed at the Twenty-Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer to consider the proposal to phase down hydrofluorocarbons (“HFCs”) that has been presented by the United States and other governments at several successive meetings of the parties. The discussion group met three times at the Twenty-Fifth Meeting of the Parties, held in Bangkok from October 21-25, 2013. The parties agreed to request the Protocol’s Technology and Economic Assessment Panel to assess alternatives to HFCs and other ozone-depleting substances. The report of the Technology and Economic Assessment Panel on the proposed phase down of HFCs was considered. The Report of the Twenty-Fifth Meeting of the Parties is available at <http://conf.montreal-protocol.org/meeting/mop/mop-25/report/default.aspx>. The October 22, 2013 remarks at the Meeting of the Parties by Daniel A. Reifsnyder, Deputy Assistant Secretary of State for the Bureau of Oceans and International Environmental and Scientific Affairs, are excerpted below and available at [www.state.gov/e/oes/rls/remarks/2013/215855.htm](http://www.state.gov/e/oes/rls/remarks/2013/215855.htm).

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...I am speaking this morning on behalf of Canada, Mexico, and the United States of America. With our colleagues from Canada and Mexico, we have proposed to amend the Montreal Protocol to:

- Phase down the production and consumption of hydrofluorocarbons (HFCs) in all Parties
- Control byproduct emissions of HFC-23
- Address trade in HFCs, and
- Require licensing systems and reporting on HFCs

The environmental benefits of this proposal would be considerable, amounting to more than 90 gigatons (gt) of carbon dioxide-equivalent (CO<sub>2</sub>-e) through 2050. This equates to about two years of current emissions of greenhouse gases from human sources.

Why do we propose to phase down—under the Montreal Protocol—consumption and production of substances that have no ozone depleting potential? Aren’t these substances now included in the basket of gases under the UN Framework Convention on Climate Change?

We propose to phase down HFC consumption and production here because it is our own efforts under the Montreal Protocol—as we seek to phase out hydrochlorofluorocarbons (HCFCs)—that are leading Parties increasingly to consume and produce them. Article 2.2b of the Vienna Convention calls on Parties to “harmonize” appropriate policies in the phaseout of ozone depleting substances. Because HFCs are replacements for chlorofluorocarbons (CFCs) and HCFCs that have been and are being phased out under the Protocol we have the authority and responsibility under the Protocol to address HFCs.

Not only that, Mr. Co-chairman. We have a track record of success under the Montreal Protocol that is the rival of many other international instruments. The Montreal Protocol remains

the only “universal” instrument that has been ratified by all countries of the world. Under it, we have the expertise and the institutions—including importantly the Montreal Protocol Multilateral Fund—as well as the “band-width” if you will to undertake this effort.

Yes, it is true that HFCs are included in the basket of gases under the UN Framework Convention on Climate Change, and our proposed amendment would not change that. We have been very clear that we will continue to include HFCs within the scope of the UNFCCC and its Kyoto Protocol for accounting and reporting of emissions.

I restate these essential points here, even though they are by now well known to most of the delegates in this hall. This is not the first time we have submitted such an amendment proposal, nor is it the first time that this issue has been considered at a meeting of the Parties. This is the fourth year that our three countries have submitted an amendment proposal. It is the fifth year that we have discussed this issue at the MOP.

We have been greatly encouraged since our meeting last year in Geneva by developments related to HFCs, and in particular by the growing awareness around the world of the threat they pose to the climate system and by the growing realization of the opportunity we have here to take action.

A number of these developments were noted yesterday by our Executive Secretary speaking on behalf of UNEP Executive Director Achim Steiner. Among them, he noted that in June 2012 the outcome document from the Rio+20 Conference in Brazil, “The Future We Want” had the following provision:

“We recognize that the phase-out of ozone-depleting substances is resulting in a rapid increase in the use and release of high global-warming potential hydrofluorocarbons to the environment. We support a gradual phase-down in the consumption and production of hydrofluorocarbons.”

Of course, production and consumption are the control mechanisms we use under the Montreal Protocol—meaning that the Rio+20 language expresses support not only for minimizing HFCs as we phase out HCFCs, but also for implementing a comprehensive phase down using the very same tools we use here.

Also noted yesterday was the language just last month adopted by G-20 leaders. We recall that they said:

“We also support complementary initiatives, through multilateral approaches that include using the expertise and the institutions of the Montreal Protocol to phase down the production and consumption of hydrofluorocarbons (HFCs), based on the examination of economically viable and technically feasible alternatives. We will continue to include HFCs within the scope of the UNFCCC and its Kyoto Protocol for accounting and reporting of emissions.”

Similar support for action using the institutions and expertise of the Montreal Protocol have been expressed by a number of our leaders in important bilateral meetings as well. For example, last month on the margins of the G-20 in St. Petersburg, President Obama and President Xi of China said:

“We emphasize the importance of the Montreal Protocol, including as a next step through the establishment of an open-ended contact group to consider all relevant issues, including financial and technology support to Article 5 developing countries, cost effectiveness, safety of substitutes, environmental benefits, and an amendment.”

We think it is time for us, the Parties to the Montreal Protocol, to move forward as we have been broadly encouraged to do in multiple fora and as we have been specifically encouraged to do by many of our leaders.



Mr. Co-Chair, it is time to establish an open-ended contact group on an amendment to phase down the production and consumption of HFCs, based on the examination of economically viable and technically feasible alternatives. The contact group should consider an amendment and all relevant issues, including financial and technology support to Article 5 developing countries, cost effectiveness, safety of substitutes, and environmental benefits.

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## 5. Sustainable Development

The Millenium Development Goals (“MDGs”), established by nearly 200 countries in 2000, have a target date of 2015. As that year approaches, discussion has turned to establishing an agenda for post-2015 development. Secretary Kerry addressed the Millennium Development Goals High-Level Meeting on September 25, 2013 in New York on the subject of the post-2015 development agenda. His remarks are available at [www.state.gov/secretary/remarks/2013/09/214723.htm](http://www.state.gov/secretary/remarks/2013/09/214723.htm). On December 3, 2013, Dr. Kerri-Ann Jones, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, addressed the UNEP North American Major Groups and Stakeholders consultation in Washington, D.C. on the subject of the global post-2015 development agenda. Her remarks, excerpted below, are available in full at [www.state.gov/e/oes/rls/remarks/2013/218680.htm](http://www.state.gov/e/oes/rls/remarks/2013/218680.htm).

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...Today, we are on the other side of Rio+20 and the discussion is all about the post-2015 agenda. “The Future We Want,” the negotiated outcome document from the Rio conference, is a very important piece of that discussion. Also important is the effort underway by governments, organizations, and individuals to review the progress made on the Millennium Development Goals (MDGs) and where progress has been uneven. The world has met two MDGs — reducing poverty by 50 percent and halving the proportion of people with no safe drinking water — well ahead of the 2015 deadline. Progress on many MDGs, however, is lagging, and fragile and post-conflict states are unlikely to achieve any MDGs. A lot of the goals in these states were not met.

So we are at a crossroads. Actually, not just a crossroads, but a convergence. We have the MDGs and all the work to date now converging with the [Sustainable Development Goals or] SDG discussion. Ensuring that the global post-2015 development agenda reflects our existing goals of eradicating extreme poverty and hunger, combating disease, achieving gender equality, and environmental sustainability. The agenda ahead is a large and important one and is going to require extensive civil society participation.

We should take full advantage of the time from now to 2015 to achieve the MDGs. As we look forward, the United States envisions a future agenda where eradicating extreme poverty is central; an agenda that genuinely integrates the three aspects of sustainable development—economic, social, and environmental; and an agenda that recognizes that environment is critical to sustainable development—and to lasting poverty reduction. We would like to see a truly integrated agenda.



This is an exciting time, but it is very challenging to integrate perspectives. We know that this is an ambitious undertaking. It is a very important undertaking and meetings like this are foundational. Efforts to end extreme poverty must be at the core of the post-2015 development agenda. President Obama embraced this vision in his 2013 State of the Union speech when he said that “the United States will join with our allies to eradicate such extreme poverty in the next two decades.” (<http://www.whitehouse.gov/speech/sotu-2013>)

The U.S. was active at Rio+20 and the “Future We Want” echoes what President Obama said in his speech. As Diallo was saying, integrating the specificity of each group’s interests will not be easy. We have to remember how concerned people were going into Rio+20 about how groups might come together. Good progress was made then, and now we have a chance to take this to the next level. Having talked a bit about our aspirations in the post-2015 development agenda context, I’d like to switch gears and talk about the practical side. First, the post-2015 development agenda process; second, the U.S. government process for post-2015, and third, civil society and private sector engagement—across all different interests and sectors.

First, let me briefly describe some of the post-2015 process so far. There are many different processes and initiatives that are underway as inputs to post-2015, some of which resulted from the Rio+20 outcome. I will discuss two: 1) UN Secretary General’s High-Level Panel of Eminent Persons (HLP); and 2) Open Working Group on Sustainable Development Goals (OWG-SDGs).

In May, the High-Level Panel came out with its report on the post-2015 development agenda, which included 12 illustrative universal goals and targets. For the U.S., John Podesta served on the panel. The report is comprehensive. From the U.S. perspective, we feel it’s a pretty good report and is a good starting point. We support many of the report’s key themes including, focusing on finishing the work of the MDGs, keeping poverty at the front and center while integrating economic growth and environmental sustainability. Also, we support the report’s emphasis on making sure that members of historically marginalized and at-risk groups, such as persons with disabilities and indigenous persons are not left behind. There’s been a lot of discussion so far, but the report pulls it all together in a positive way and provides good insight into how to do it.

The Open Working Group on SDGs has met five times since its first session in March 2013. The November meeting took place last week. There are 30 member seats, each seat shared by groups of countries. So many countries wanted to join the OWG so they had to share seats. This is a good sign as it shows the incredible amount of interest in the process, but it also shows the complexity. The United States shares a seat with Canada and Israel. Ambassador Elizabeth Cousens up in New York is the lead U.S. representative on the group.

During their meetings, member states are stock taking and generating ideas on potential SDGs. The remaining three Open Working Group meetings—in December, January and February—will include issues important to many of us—including my Bureau. Issues include climate, oceans, the Small Island Developing States, biodiversity, forests, sustainable cities, and sustainable consumption and production. Earlier this year, the Open Working Group discussed water and sanitation, desertification, land degradation and drought, food security and nutrition, and health.

The Open Working Group on SDGs has a few remaining meetings. These are not official negotiations, but it is an important formative period for all of us. The Group will produce a report before next September. The Secretary General is expected to produce a synthesis report (taking into account the OWG-SDGs synthesis report, the Expert Committee on Financing

Report, the results of global consultations, and the HLP report) for the 69th Session of the UN General Assembly. There will be a UN intergovernmental negotiation process for post-2015 beginning officially in late 2014. Negotiations will conclude with a summit of Heads of State in September 2015—where countries will adopt the post-2015 development agenda.

There are other formal and informal efforts. And, between now and then, there are a lot of discussions to have. The UN, through country and thematic consultations and the My World Survey web site, is striving to make the post-2015 process open and consultative. The My World Survey asks citizens from around the world to identify which six of sixteen possible issues they think would make the most difference to their lives. High on the U.S. list are some of the issues included such as protecting forests, rivers, oceans, and access to clean water and sanitation. Responses will be gathered until 2015.

To feed into the UN process, the U.S. government has established a post-2015 interagency process—post-2015 cuts across many agencies. We have set up interagency working groups focusing on different topics. Ranging from cross-cutting issues such as rights and inclusiveness and governance to specific topics on energy, health, and the environment. I chair the working group on Environment and Oceans. While we recognize this is a formative period, it is also an important period.

We have begun formulating our approach to these and other issues. One of the things we are trying to do—and would encourage others to do as well—is to use the HLP report as a starting point. It is something we can react to going forward. We are also working to build on past discussions and accomplishments, working to gather and generate innovative approaches on the whole range of possible post-2015 topics and cross-cutting issues. This involves hearing from the much broader community—at meetings such as this one. It's time to think about how to be creative and we want to know what's happening at NGOs and in the private sector.

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## **B. PROTECTION OF MARINE ENVIRONMENT AND MARINE CONSERVATION**

### **1. Arctic Council**

On May 15, 2013, the Arctic Council convened its eighth annual ministerial meeting in Kiruna, Sweden. The Arctic Council includes eight member states: Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden, and the United States. Secretary Kerry attended and delivered opening remarks, available at [www.state.gov/secretary/remarks/2013/05/209403.htm](http://www.state.gov/secretary/remarks/2013/05/209403.htm). Two key outcomes of the ministerial were the conclusion of a legally binding agreement on cooperation in the event of an oil spill or related emergency and a political declaration on overall cooperation to address issues of concern regarding the Arctic. The agreement and the political declaration are discussed below.

**a. *Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic***

On May 15, 2013, the governments of the member states of the Arctic Council (“the Parties”) concluded the “Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic.” The full text of the agreement is available at [www.state.gov/r/pa/prs/ps/2013/05/209406.htm](http://www.state.gov/r/pa/prs/ps/2013/05/209406.htm).

Article 1 states the objective of the Agreement, “to strengthen cooperation, coordination and mutual assistance among the Parties on oil pollution preparedness and response in the Arctic in order to protect the marine environment from pollution by oil.” Article 3 specifies the scope of the agreement, which applies with respect to oil pollution incidents that occur in or may pose a threat to any marine area over which a Party exercises sovereignty, sovereign rights or jurisdiction, including its internal waters, territorial sea, exclusive economic zone and continental shelf, consistent with international law and above a defined southern limit. The agreement also applies in areas north of the southern limit and beyond the jurisdiction of any State, to the extent consistent with international law. Article 4 requires each Party to “maintain a national system for responding promptly and effectively to oil pollution incidents.” Article 5 stipulates that each Party’s national system must include designated national authorities and contact points responsible for oil pollution preparedness, response, and assistance. Article 6 relates to notification to Parties and other States in the event of an oil pollution incident. Article 7 addresses monitoring to identify and respond to oil pollution incidents. Article 8 provides that Parties may request assistance in addressing oil pollution incidents. The agreement also addresses the allocation of costs among Parties for their response actions, and allows general or case-by-base arrangements between Parties to allocate costs otherwise. The agreement also encourages joint exercises and other forms of cooperation, and requires the Parties to develop and maintain operational guidelines and other information to be contained in non-binding “Appendices.” Article 14 provides for regular meetings of the Parties:

The Parties shall meet no later than one year after the entry into force of this Agreement, as convened by the depositary, and from then on as decided by the Parties. At these meetings, the Parties shall review issues related to the implementation of this Agreement, adopt Appendices to this Agreement or modifications to the Appendices as provided in Article 20 of this Agreement, as appropriate, and consider any other issues as decided by the Parties. Parties may elect to convene such meetings in conjunction with meetings of the Arctic Council.

In accordance with Article 22, the Agreement will enter into force “30 days after the date of receipt by the depositary of the last written notification through diplomatic

channels that the Parties have completed the internal procedures required for its entry into force.”

**b. *Kiruna Declaration and “Vision for the Arctic” Statement***

Also on May 15, 2013 at the Arctic Council ministerial, representatives of the Arctic Council member states signed the Kiruna Declaration, available at [www.state.gov/r/pa/prs/ps/2013/05/209405.htm](http://www.state.gov/r/pa/prs/ps/2013/05/209405.htm). The Kiruna Declaration is excerpted below.

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We, the Ministers representing the eight Arctic States, joined by the representatives of the six Permanent Participant organizations of the Arctic Council...

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Expressing concern that global emissions of greenhouse gases are resulting in rapid changes in the climate and physical environment of the Arctic with widespread effects for societies and ecosystems and repercussions around the world, reiterating the urgent need for increased national and global actions to mitigate and adapt to climate change,

Noting the substantial progress we have made to strengthen our cooperation and acknowledging the leadership of the Arctic Council in taking concrete action to respond to new challenges and opportunities,

Hereby:

**IMPROVING ECONOMIC AND SOCIAL CONDITIONS**

Recognize the central role of business in the development of the Arctic, and decide to increase cooperation and interaction with the business community to advance sustainable development in the Arctic,

Welcome the Arctic Council’s work on corporate social responsibility and sustainable business, and encourage enterprises operating in the Arctic to respect international guidelines and principles,

Recognize that Arctic economic endeavors are integral to sustainable development for peoples and communities in the region, desire to further enhance the work of the Arctic Council to promote dynamic and sustainable Arctic economies and best practices, and decide to establish a Task Force to facilitate the creation of a circumpolar business forum,

Welcome the Arctic Maritime and Aviation Transportation Infrastructure Initiative and its comparative analysis of seaport and airport infrastructure in the Arctic States, and encourage continued efforts to identify opportunities for complementary infrastructure development and use,

Appreciate that the first legally binding agreement negotiated under the auspices of the Arctic Council, the Agreement on Cooperation in Aeronautical and Maritime Search and Rescue in the Arctic, has come into force, recognize its important role for safe transport and enhancing cooperation in assisting people in distress in the Arctic, and acknowledge the importance of continued operational exercises in support of its implementation,

Acknowledge that Arctic peoples are experiencing challenges associated with rapid socio-economic and environmental changes, note the previous work of the Arctic Council to promote mental health in Arctic communities, and decide to undertake further work to improve and develop mental wellness promotion strategies,

Recognize that the use of traditional and local knowledge is essential to a sustainable future in the Arctic, and decide to develop recommendations to integrate traditional and local knowledge in the work of the Arctic Council,

Acknowledge the importance of indigenous peoples' traditional ways of life to their economic well-being, culture and health, and request Senior Arctic Officials to recommend ways to increase awareness regionally and globally on traditional ways of life of the Arctic indigenous peoples and to present a report on this work at the next Ministerial meeting in 2015,

#### ACTING ON CLIMATE CHANGE

Recognize that climate change in the Arctic causes significant changes in water, snow, ice and permafrost conditions, with cascading effects on biodiversity, ecosystems, economic and human living conditions in the Arctic with repercussions around the world, and that substantial cuts in emissions of carbon dioxide and other long-lived greenhouse gases are necessary for any meaningful global climate change mitigation efforts, and commit to strengthen our efforts to find solutions,

Recognize that Arctic States, along with other major emitters, substantially contribute to global greenhouse gas emissions, and confirm the commitment of all Arctic States to work together and with other countries under the United Nations Framework Convention on Climate Change (UNFCCC) to conclude a protocol, another legal instrument or an agreed outcome with legal force no later than 2015, and urge all Parties to the Convention to continue to take urgent action to meet the long-term goal aimed at limiting the increase in global average temperature to below 2 degrees Celsius above pre-industrial levels,

Recognize that reduction of short-lived climate forcers, could slow Arctic and global climate change, and have positive effects on health, and welcome the report on short lived climate forcers, and support its recommendations including that national black carbon emission inventories for the Arctic should continue to be developed and reported as a matter of priority,

Urge the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer to take action as soon as possible, complementary to the UNFCCC, to phase-down the production and consumption of hydrofluorocarbons, which contribute to the warming of the Arctic region,

Decide to establish a Task Force to develop arrangements on actions to achieve enhanced black carbon and methane emission reductions in the Arctic, and report at the next Ministerial meeting in 2015,

Welcome the on-going work on the Arctic Resilience Report, and emphasize the need for forward-looking cooperation with a view to increase Arctic capacity to adequately address rapid change and resilience,

Recognize that adaptation to the impacts of climate change is a challenge for the Arctic, and the need for strengthened collaboration with Arctic indigenous peoples and other residents, governments and industry, welcome the reports, key findings and on-going work on the

Adaptation Actions for a Changing Arctic initiative, and decide to continue the work on enhancing the capacity of decision-makers to manage climate risks including through an on-line information portal and through improved predictions of combined effects,

#### PROTECTING THE ARCTIC ENVIRONMENT

Announce the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, the second legally binding agreement negotiated under the auspices of the Arctic Council, and encourage future national, bi-national and multinational contingency plans, training and exercises, to develop effective response measures,

Recognize that effective prevention, including related containment practices, is critical to ensuring the protection of the Arctic marine environment from oil pollution incidents, welcome the Recommended Practices in the Prevention of Arctic Marine Oil Pollution Project reports and recommendations to Ministers, and encourage Arctic States to pursue further work in the recommended areas,

Decide to establish a Task Force to develop an Arctic Council action plan or other arrangement on oil pollution prevention, and to present the outcomes of its work and any recommendations for further action at the next Ministerial meeting in 2015,

Recognize the value of sustaining Arctic ecosystems and biodiversity and that the Arctic environment needs to be protected as a basis for sustainable development, prosperity, lifestyles and human well-being, and commit to pursue the conservation and sustainable use of Arctic biological resources,

Note with concern that Arctic biodiversity is being degraded and that climate change is the most serious threat, welcome the Arctic Biodiversity Assessment, the first Arctic-wide comprehensive assessment of status and emerging trends in Arctic biodiversity, approve its recommendations and encourage Arctic States to follow up on its recommendations, and instruct Senior Arctic Officials to ensure that a plan for further work under the Arctic Council to support and implement its recommendations is developed, and that a progress report is delivered to the next ministerial meeting,

Encourage Arctic States to take decisive action to help sustain Arctic biodiversity and implement internationally agreed biodiversity objectives, to cooperate on adaptive management strategies for vulnerable species and ecosystems, and to continue existing Arctic biodiversity research and monitoring efforts through the Circumpolar Biodiversity Monitoring Program,

Welcome the Arctic Ocean Acidification assessment, approve its recommendations, note with concern the potential impacts of acidification on marine life and people that are dependent on healthy marine ecosystems, recognize that carbon dioxide emission reductions are the only effective way to mitigate ocean acidification, and request the Arctic States to continue to take action on mitigation and adaptation and to monitor and assess the state of Arctic Ocean acidification,

Recognize the important ongoing work in the International Maritime Organization to develop a mandatory Polar Code on shipping and decide to strengthen our collaboration in that work toward its expeditious completion,

Welcome the Arctic Ocean Review report, undertaken to provide guidance to Arctic States on strengthening governance in the Arctic through a cooperative, coordinated and integrated approach to the management of the Arctic marine environment, approve its recommendations and request appropriate follow-up actions, and report on progress at subsequent ministerial meetings,

Recognize that there are further persistent organic pollutants to be addressed that pose threats to human health and the environment in the Arctic, encourage Arctic States to continue monitoring and assessment activities and enhance their efforts to meet the objectives of the Stockholm convention, and welcome the completion of the successful demonstration project

preventing the release of 7000 tons of obsolete pesticides into the Arctic environment, and look forward to further activities in this area,

Note the work of the Arctic Council in raising global awareness and understanding of the impacts of mercury on the health of people and wildlife in the Arctic, welcome the Minamata Convention on Mercury, appreciate the reference to the particular vulnerabilities of Arctic ecosystems and indigenous communities, encourage its swift entry into force along with robust use and emission reduction actions, and pledge to assist the evaluation of its effectiveness through continued monitoring and assessments,

Welcome the report on Ecosystem Based Management, approve the definition, principles and recommendations, encourage Arctic States to implement recommendations both within and across boundaries, and ensure coordination of approaches in the work of the Arctic Council's Working Groups,

Agree that cooperation in scientific research across the circumpolar Arctic is of great importance to the work of the Arctic Council, and establish a Task Force to work towards an arrangement on improved scientific research cooperation among the eight Arctic States,  
**STRENGTHENING THE ARCTIC COUNCIL**

Adopt the statement "Vision for the Arctic",

Welcome the establishment of the Arctic Council Secretariat in Tromsø, Norway, note the Host Country Agreement signed between the Government of Norway and the Director of the Arctic Council Secretariat, approve its Terms of Reference, Staff rules, Financial rules, Roles and Responsibilities of the Director, and budget for 2013, and instruct Senior Arctic Officials to approve a budget for 2014-2015,

Approve the revised Arctic Council Rules of Procedure,

Note the Chair's conclusions from the Arctic Environment Ministers Meeting in February 2013, and welcome further high-level engagement and meetings,

Welcome China, India, Italy, Japan, Republic of Korea and Singapore as new Observer States, and take note of the adoption by Senior Arctic Officials of an Observer manual to guide the Council's subsidiary bodies in relation to meeting logistics and the roles played by Observers,

The Arctic Council receives the application of the EU for observer status affirmatively, but defers a final decision on implementation until the Council ministers are agreed by consensus that the concerns of Council members, addressed by the President of the European Commission in his letter of 8 May are resolved, with the understanding that the EU may observe Council proceedings until such time as the Council acts on the letter's proposal,

Acknowledge that the work of the Arctic Council continues to evolve to respond to new challenges and opportunities in the Arctic, request Senior Arctic Officials to recommend ways and means to strengthen how the work of the Arctic Council is carried out, including identifying opportunities for Arctic States to use the Council's work to influence and shape action in other regional and international fora as well as identifying approaches to support the active participation of Permanent Participants, and to present a report on their work at the next Ministerial meeting in 2015,

Acknowledge the decision of the Permanent Participants to relocate the Indigenous Peoples Secretariat to Tromsø, Norway,

Adopt the Senior Arctic Officials Report to Ministers, including its working group work plans, and instruct Senior Arctic Officials to review and adjust the mandates and work plans of

the Arctic Council working groups and other subsidiary bodies, and establish new ones, if appropriate, and to follow up on the recommendations agreed to by the Arctic Council,

Thank the Kingdom of Sweden for its Chairmanship of the Arctic Council during the period 2011-2013, concluding the first round of eight Arctic States chairmanships, and welcome the offer of Canada to chair the Arctic Council during the period 2013-2015 and to host the Ninth Ministerial meeting in 2015.

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As stated above in the Kiruna Declaration, the Arctic Council adopted the statement entitled, "Vision for the Arctic" on May 15, 2013 in Kiruna. That statement follows.

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We, the eight Arctic States together with the six Arctic Indigenous Peoples' Organizations, have met today at the end of the first round of eight successive chairmanships of the Arctic Council.

We have many accomplishments to celebrate since the signing of the Ottawa Declaration in 1996, and it is timely for us to set out a vision for the future of our region.

Guided by the Ottawa Declaration, the Arctic Council has become the pre-eminent high-level forum of the Arctic region and we have made this region into an area of unique international cooperation.

We have achieved mutual understanding and trust, addressed issues of common concern, strengthened our co-operation, influenced international action, established a standing secretariat and, under the auspices of the Council, Arctic States have concluded legally binding agreements. We have also demonstrated the importance of science and traditional knowledge for understanding our region and for informed decision-making in the Arctic.

The Arctic is changing and attracting global attention and as we look to the future, we will build on our achievements and will continue to cooperate to ensure that Arctic voices are heard and taken into account in the world.

### **A peaceful Arctic**

The further development of the Arctic region as a zone of peace and stability is at the heart of our efforts. We are confident that there is no problem that we cannot solve together through our cooperative relationships on the basis of existing international law and good will. We remain committed to the framework of the Law of the Sea, and to the peaceful resolution of disputes generally.

### **The Arctic home**

We are committed to demonstrating leadership in regional and global forums to address challenges affecting our home. The well-being of all Arctic people is fundamental as the region develops.

We will continue to exercise our responsibility for safeguarding indigenous peoples' rights, including by creating conditions for the preservation and development of social structures, cultural traditions, languages and means of subsistence.



**A prosperous Arctic**

The economic potential of the Arctic is enormous and its sustainable development is key to the region's resilience and prosperity. Transparent and predictable rules and continued cooperation between Arctic States will spur economic development, trade and investments.

We will continue to work cooperatively to support the development of sustainable Arctic economies to build self-sufficient, vibrant and healthy Arctic communities for present and future generations.

Economic cooperation will be on the top of our agenda.

**A safe Arctic**

To meet the needs of an ever-changing Arctic we will further strengthen our cooperation in the fields of environmental and civil security. Aware that maritime safety requires broad regional and international cooperation, we will continue to develop best practices and other measures for the Arctic region.

**A healthy Arctic environment**

We recognize the uniqueness and fragility of the Arctic environment, and the critical importance of healthy environments to sustainable communities. We are aware that the Arctic environment continues to be affected by events outside of the region, in particular climate change, and that resulting changes in the Arctic have global repercussions.

We are concerned with the growing effects of climate change, and the local and global impacts of large-scale melting of the Arctic snow, ice and permafrost. We will continue to take action to reduce emissions of greenhouse gases and short-lived climate pollutants, and support action that enables adaptation.

We will strengthen our work, both within the Arctic and globally, to address the environmental challenges facing the region. We remain committed to managing the region with an ecosystem-based approach which balances conservation and sustainable use of the environment.

**Arctic knowledge**

We will continue to deepen the knowledge and understanding of the Arctic, both inside and outside the region, and to strengthen Arctic research and transdisciplinary science, encourage cooperation between higher education institutions and society, and synergies between traditional knowledge and science.

**A strong Arctic Council**

Membership in the Arctic Council is and will remain for the Arctic States with the active participation and full consultation of the Arctic Indigenous Peoples Organizations. Decisions at all levels in the Arctic Council are the exclusive right and responsibility of the eight signatories to the Ottawa Declaration.

The Arctic Council is open to observers who can contribute to the work of the Arctic Council and share the commitment of the Arctic States to the peaceful resolution of disputes and abide by the criteria for observers established by the Arctic Council.

As we embark on the second round of chairmanships, we will continue our work to strengthen the Arctic Council to meet new challenges and opportunities for cooperation, and pursue opportunities to expand the Arctic Council's roles from policy-shaping into policy-making.

The founding values, objectives and commitments of the Arctic Council will continue to be the North Star that guides our cooperation.

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## 2. Antarctica

A key priority for the United States in 2013 was the establishment of a new marine protected area (“MPA”) in Antarctica’s Ross Sea. See *Digest 2012* at 441, discussing the joint proposal of the United States and New Zealand to establish the Ross Sea MPA. The United States sent a delegation of government scientists and other officials to a special meeting of the Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”), the organization with jurisdiction over marine conservation in the Southern Ocean, held in Bremerhaven, Germany, July 15-16, 2013. A key goal of the special meeting, only the second in CCAMLR’s history, was to take action on the proposal by the U.S. and New Zealand to create a MPA in the Ross Sea region and a second proposal by other parties to create a MPA in the East Antarctica region. As stated in a July 15 State Department media note, the primary U.S. objective at the meeting was advancing the Ross Sea proposal. The media note, available at [www.state.gov/r/pa/prs/ps/2013/07/211908.htm](http://www.state.gov/r/pa/prs/ps/2013/07/211908.htm), explains:

The United States strongly supports the sustainable management of marine living resources, and urges members of the Commission to work with the United States and New Zealand to find consensus and take the historic step to protect this special marine ecosystem.

The Ross Sea Region is one of the last and greatest ocean wilderness areas on the planet. It is home to a unique and productive ecosystem that supports vast numbers of whales, penguins, seals and a vast range of marine life. With limited human impact to-date and a long history of scientific exploration and discovery, the Ross Sea Region is also a natural laboratory for scientific study to better understand climate change, our oceans, and our world.

Unfortunately, the CCAMLR was unable to reach agreement on establishing marine protected areas, including in the Ross Sea, at its special meeting on July 16, 2013. Secretary Kerry’s press statement on the failure to achieve this objective in July 2013 is available at [www.state.gov/secretary/remarks/2013/07/212063.htm](http://www.state.gov/secretary/remarks/2013/07/212063.htm), and expresses hope for future opportunities:

There’s simply no comprehensive effort to protect earth’s most critical resource that doesn’t include an equally comprehensive effort to create marine protected areas (MPAs). That’s why the United States and New Zealand proposed the creation of these areas in the Ross Sea Region. A tremendous amount of work has gone into developing the science that underpins our joint proposal, and to leverage action, we’ll be doubling down on sharing the findings of our scientists who spend those critical months in the dead of winter at McMurdo Station researching and understanding the realities that face all of us.

This is a longtime passion of mine and it's an imperative for me as Secretary of State. I've seen firsthand how acidification, pollution, and sea level rise tear at the fabric of our economies, our communities, even our security. But this isn't just a personal priority. The Ross Sea is a natural laboratory. Its ecosystem is as diverse as it is productive, and we have a responsibility to protect it as environmental stewards—just as we do the rest of the ocean.

President Obama has put climate change and environmental conservation on the front burner where it belongs, and we have a responsibility to keep it there. Yes, the road has been harder than we hoped. But I am pleased that so many countries were willing to work together towards this crucial objective. While they were not able to reach full agreement at this meeting to designate MPAs for Antarctica, they came close. The majority of CCAMLR members were able to find common ground. We didn't agree on all of the specifics, but there's an emerging consensus that the Antarctic region requires protection.

On October 16, 2013, foreign ministers of Australia, France, and New Zealand; the U.S. Secretary of State; and the Commissioner for Maritime Affairs and Fisheries of the European Union issued a joint statement calling on CCAMLR to establish two new marine protected areas in Antarctica at its next session. The joint statement is available at [www.state.gov/r/pa/prs/ps/2013/10/215436.htm](http://www.state.gov/r/pa/prs/ps/2013/10/215436.htm) and includes the following:

The establishment of such MPAs follows through on the vision expressed by all nations at the World Summit on Sustainable Development in Johannesburg in 2002 and the Rio+20 conference in 2012.

Since 2005, the Commission for the Conservation of Antarctic Marine Living Resources (the Commission, CCAMLR) has worked to complete the necessary groundwork for the designation of MPAs in CCAMLR, including the establishment of a legal framework agreed by all Members and extensive scientific research.

The Ross Sea and East Antarctica regions are widely recognized for their remarkable ecological and scientific importance. The MPA proposals now before the Commission are based on sound and best available science, will provide a unique laboratory for continuation of marine research, and will have profound and lasting benefits for ocean conservation, including sustainable use of its resources.

We call on all Members of the Commission to bring years of preparation to a successful conclusion by establishing these important, science-based MPAs at the next session of the Commission in October 2013 in Hobart, Australia.

At the meeting in Hobart, CCAMLR again failed to reach consensus on the Ross Sea and East Antarctica proposals. The Commission continues to consider them.

### 3. Informal Consultative Process on Oceans and Law of the Sea (“ICP”)

The United States participated in the 14th meeting of the Informal Consultative Process on Oceans and Law of the Sea (“ICP”) at the United Nations from June 17 to 20, 2013. Delegates and panelists at the ICP discussed the impact of ocean acidification on the marine environment. Excerpts follow from the U.S. statement at the general exchange of views at the ICP.

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Ocean acidification is one of the most important, urgent ocean issues facing society today. Ocean acidification is occurring because the world’s oceans are absorbing increasing amounts of atmospheric carbon dioxide, leading to greater acidity in the ocean. This change in ocean chemistry is a growing global problem with the potential to have broad and significant impacts on the marine ecosystems on which we all depend. It affects every ocean, from the Arctic Ocean to the Southern Ocean.

Studies have shown that ocean acidification can have a dramatic effect on some calcifying species, including oysters, clams, sea urchins, shallow water corals, deep sea corals, and calcareous plankton. When these organisms are at risk, the ecosystem services that they provide and the entire food web may also be at risk. Today, more than a billion people worldwide rely on food from the ocean as their primary source of protein. Many jobs and economies around the world depend on the living marine resources in our oceans.

Scientists have been sounding the alarm on ocean acidification for several years and we are now seeing more attention to this important issue. For example, there will be significantly more coverage of ocean acidification in the upcoming 5th Assessment Report of the Intergovernmental Panel on Climate Change than there has been in years past. The World Ocean Assessment, to be published in 2014, will also provide the global community with important information about ocean acidification and its impact on the marine environment.

And our policy bodies are beginning to consider how to react to this issue. For example, in the recent Arctic Council Ministerial, Arctic nations welcomed the recent Arctic Ocean Acidification assessment—the first report detailing acidification in a specific ocean and perhaps a model for elsewhere—and committed to continue to monitor and assess the state of Arctic Ocean acidification.

During last year’s Rio+20 Sustainable Development Conference, leaders agreed to strong language on ocean acidification, including the need for collective action to prevent it; the need to build resilience in marine ecosystems; and the need for more research, monitoring, and observations. The Rio+20 Conference was one of the first conferences of its kind to consider the issue of ocean acidification. We believe it is important to build on the commitments we made at Rio+20, and we look forward to conversations this week on the path forward.

In the United States, our National Ocean Policy prioritizes ocean acidification as an area of special emphasis. Many government agencies, as well as academic institutions, in the United States are conducting research to understand the impacts of ocean acidification.

For example, several laboratories of our National Oceanic and Atmospheric Administration (NOAA) are conducting experiments to determine how economically and

ecologically important species respond to ocean acidification. Researchers use these data to explore how aquaculture, wild fisheries, and food webs may change as ocean chemistry changes.

Along with the significant amount of activities we are conducting domestically to better understand and address the effects of ocean acidification on the marine environment, we believe it is critical to increase international collaboration on research, particularly with regard to the effects of acidification on shell-forming organisms, marine biodiversity, and food security. We are hopeful that this week we can consider questions such as: How can we work together to enhance the global community's research and observation efforts? How can we effectively share such information? How can we use information to determine how to address ocean acidification? How can capacity-building facilitate broader research and response efforts?

During last year's Rio+20 Conference, the United States announced in-kind contributions and financial support through the Peaceful Uses Initiative for the establishment of a new Ocean Acidification International Coordination Center based at the International Atomic Energy Agency's Environment Laboratories in Monaco. We believe that this Center will serve as an important means to develop a more comprehensive understanding of ocean acidification. We intend to continue our strong support of this Center and we encourage others to join this effort. Robust international engagement in the Center will contribute significantly to our understanding of ocean acidification.

The United States also believes that the establishment of a global ocean acidification observing network is an important step towards understanding ocean acidification on a global scale. This network, which will involve hundreds of scientists across the globe, will measure ocean acidification through ecological assessments and the deployment of instruments in key ocean areas. It is a new scientific effort with broad international cooperation and a commitment to build capacity in developing countries. We are working closely with partners to implement this network and to facilitate participation of developing countries. We have experts here with us who would be pleased to share more information on this effort and on upcoming scientific meetings on the network.

\* \* \* \*

One of the key ways to deal with the problem of ocean acidification will be through reduction of other significant stressors on the marine environment. Reduction of stressors such as marine pollution and overfishing likely will prove critical to withstanding ocean acidification and building resilience in the marine ecosystem. We understand, however, that ultimately the problem of ocean acidification will continue unless emissions of carbon dioxide are reduced.

In conclusion, we would like to reiterate our very strong interest in this exchange of information on ocean acidification this week. We believe ocean acidification is one of the most pressing ocean issues facing society today. We look forward this week to learning from expert panelists and other delegations and exchanging views on how to move forward.

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#### **4. Marine Pollution**

##### ***a. U.S. implementation of amendments to MARPOL Annex V***

On January 1, 2013 a resolution adopted by the International Maritime Organization (“IMO”) in 2011 entered into force, establishing a general prohibition on discharges of garbage at sea from ships. The resolution, adopted by parties acting through the IMO’s Marine Environment Protection Committee (“MEPC”), formally amends Annex V of the International Convention for the Prevention of Pollution from Ships (“MARPOL”). Resolution MEPC.201(62). On February 26, 2013, the U.S. Coast Guard announced the availability of a policy letter, “Interim Guidance for Revised MARPOL Annex V Implementation,” to assist U.S. flagged and foreign flagged oceangoing ships regarding compliance with the amendments in Resolution MEPC.201(62). 78 Fed. Reg. 13,073 (Feb. 26, 2013).

On February 28, 2013, the U.S. Coast Guard published an interim rule implementing the amendments to MARPOL Annex V. 78 Fed. Reg. 13,481 (Feb. 28, 2013). Excerpts follow from the notice in the Federal Register.

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The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex V (Garbage) restrictions on the discharge of garbage have already been implemented by the Act to Prevent Pollution from Ships (APPS). Publishing an NPRM and delaying the effective date of the change to 33 CFR part 151 is unnecessary because the change is a conforming amendment required by existing authority and because an opportunity for public comment has already been provided.

This rulemaking restates a legal responsibility already in effect under MARPOL and APPS (33 U.S.C. 1901, et seq.), which is the U.S. authority for implementing MARPOL. Through APPS, the United States accepts all modifications and amendments made to Annex V as domestic law upon the amendments’ entry into force ((33 U.S.C. 1901(a)(5)); see also section 1907(a) (requiring compliance with MARPOL)). This rulemaking will revise domestic regulations at 33 CFR part 151 to accurately reflect U.S. requirements under MARPOL Annex V.

The public has had several opportunities to comment on the MARPOL Annex V amendments that will be incorporated in Coast Guard regulations under this rulemaking.

Beginning in 2006, the United States worked with the 170 member states of the International Maritime Organization (IMO) Marine Environmental Protection Committee (MEPC) for over 5 years to amend MARPOL Annex V and greatly reduce the discharge of ship-generated garbage into the sea. A Coast Guard official serves as head of the United States Delegation to the MEPC. The Coast Guard held a public meeting in Washington, DC prior to each MEPC meeting to present the United States' position(s) on the amendments and to receive public comments which would be taken into consideration when finalizing the U.S. negotiating positions. There were no adverse public comments received prior to the July 2011 MEPC 62 (the meeting where the amendments were formally adopted by MEPC). Previous MARPOL Annex V-related regulatory projects, including the Wider Caribbean Region (WCR) special area regulation, similarly did not receive any adverse comments (77 FR 19537, April 2, 2012).

Additionally, the original APPS regulations in 33 CFR parts 151, 155, and 158 were implemented through a full informal rulemaking process, including an Advance Notice of Proposed Rulemaking (ANPRM) (53 FR 23884, June 24, 1988), an Interim Rule (IR) with Request for Comments (54 FR 18384, April 28, 1989), and a Final Rule (55 FR 35986, September 4, 1990).

#### IV. Basis and Purpose

... The subject of this rulemaking, MARPOL Annex V, regulates the discharge of garbage from ships. APPS implements MARPOL into domestic law, requiring the Secretary of the Department in which the Coast Guard is operating to administer and enforce the various Annexes of MARPOL. Through APPS, the United States accepts any modifications or amendments to MARPOL as domestic law (33 U.S.C. 1901(a)(5), see also section 1907(a) (requiring compliance with MARPOL)). In July 2011, the IMO MEPC adopted amendments to MARPOL Annex V which entered into force January 1, 2013.

MARPOL applies to the oceangoing vessels of all signatory flag administrations. Domestically, APPS requires all vessels subject to MARPOL to be in compliance with its provisions while in U.S. navigable waters. APPS goes further and specifically applies the provisions of Annex V to U.S. navigable waters as well as all other waters and vessels over which the United States has jurisdiction, including U.S. vessels in U.S. internal waters (33 U.S.C. 1901(b)).

Because APPS implements MARPOL and any modifications or amendments thereto, regulations are not required in order to carry out the provisions of MARPOL on signatory flag state vessels in U.S. waters. MARPOL, however, requires signatory states to apply the requirements equally to all vessels so no more favorable treatment is given to non-signatory vessels (MARPOL, Article 5(4)). Under MARPOL, as implemented by APPS, federal regulations must be promulgated to ensure compliance of non-signatory vessels to MARPOL standards while in U.S. navigable waters. This rulemaking meets this U.S. obligation under MARPOL as implemented by APPS and revises 33 CFR part 151 accordingly.

#### V. Discussion of the Interim Rule

MARPOL provisions, as implemented through APPS, are key elements of the Coast Guard's prevention and compliance programs. The domestic Annex V conforming regulations are located in 33 CFR part 151.

In July 2011, the IMO MEPC adopted amendments to MARPOL Annex V which entered into force January 1, 2013. The United States played a lead role at MEPC over the last several years in the development of the amendments to Annex V. These amendments reduce the types of garbage that can be discharged into the sea by establishing a general prohibition on discharges of

garbage into the sea. Under prescribed conditions, exceptions are provided for food wastes, cargo residues, cleaning agents and additives in wash waters, and animal carcasses.

Part 151 of Title 33 of the CFR will be revised to conform to the amendments. The primary revisions as the subject of this rulemaking are (1) Updating operational requirements, (2) adding new definitions, and (3) replacing placards.

\* \* \* \*

**b. *Energy Efficiency Design Index Amendments***

On January 1, 2013, the new chapter 4 of MARPOL Annex VI entered into force, establishing energy efficiency requirements for new ships through the creation of the Energy Efficiency Design Index (“EEDI”). The U.S. Environmental Protection Agency had previously published an announcement describing these energy efficiency design requirements for ships, available at

[www.epa.gov/otaq/regs/nonroad/marine/ci/420f11025.pdf](http://www.epa.gov/otaq/regs/nonroad/marine/ci/420f11025.pdf). Excerpts from this announcement appear below (with footnotes omitted).

\* \* \* \*

Under this new program, an Energy Efficiency Design Index (EEDI) will be required for new ships, with progressively more stringent efficiency targets phasing in beginning in 2013. These standards will result in significant reductions in fuel consumption, cutting fuel costs for ship operators, while reducing air and marine pollution from ships, including CO<sub>2</sub>. ...

These EEDI standards phase in from 2013 to 2025, and by then will result in 30 percent reduction in fuel consumption, and hence CO<sub>2</sub>, compared to today’s vessels.

...The EEDI applies to the most energy-intensive segments of the international shipping fleet, representing more than 70 percent of ship emissions. These segments include the following ship classes: container ships, general cargo ships, refrigerated cargo carriers, gas tankers, oil and chemical tankers, dry bulk carriers, and combination dry/liquid bulk carriers. In its present form, the EEDI requirements do not apply to other ship classes or ships with non-standard propulsion systems (*e.g.* dieselelectric, turbine, or hybrid propulsion systems). IMO is considering the extension of EEDI standards to other classes of ships.

**The Need for Efficiency Standards**

Ships provide the most efficient means for transporting goods. However, emissions from ships represent a meaningful contribution to air and marine pollution around the world. Emissions from ships will continue to grow if left unchecked. ... A recent study by IMO projects that emissions from shipping will increase 150 percent to 250 percent by 2050 in the absence of policies to reduce emissions.

The IMO study also shows that many options exist to improve the efficiency of new ships, thereby reducing fuel consumption and emissions. The measures identified by the study include hull improvements, propeller/propulsion system upgrades, alternative power options (*e.g.*, towing kite), hull coatings, propeller improvements, auxiliary systems, speed reduction, and main engine improvements.



Although technologies and methods are available today that can be used to improve energy efficiency and therefore achieve cost savings, standards in the form of energy efficiency targets such as the EEDI are needed to provide an incentive for the implementation of this technology. While many of these efficiency improvements will pay for themselves through fuel savings, there are non-financial barriers that prevent their use. These non-financial barriers include 1) fuel price uncertainty, 2) split incentives between owners, operators, and shipyards and 3) lack of good information on the fuel efficiency improvements for different technologies, and impact on life cycle costs.

#### **EEDI Standards**

The EEDI standards are expressed as percent emissions reductions from reference lines established for each ship class. ...

The EEDI standards for new ships will be implemented through four phases from 2013 to 2025....

#### **Benefits**

When this program is fully phased in, new ships will be 30 percent more efficient than they are today. This efficiency improvement has beneficial energy implications due to reduced oil consumption. More efficient ships will also emit lower amounts of criteria pollutants such as oxides of nitrogen (NO<sub>x</sub>), oxides of sulfur (SO<sub>x</sub>), and particulate matter (PM). Emissions of CO<sub>2</sub>, which are directly related to fuel consumption, will be reduced by 30 percent per ship over the long run compared to typical ships operating today. Reductions in these air emissions will benefit human health and the environment, including benefits from reduced acid deposition in our oceans.

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### ***c. Amendments to the 1996 Protocol to the London Convention***

At a meeting in October 2013, the Contracting Parties to the 1996 Protocol to the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 ("London Convention") adopted amendments to the Protocol that create a new permitting regime for certain marine geoengineering activities. The amendments define "marine geoengineering" as "a deliberate intervention in the marine environment to manipulate natural processes, including to counteract anthropogenic climate change and/or its impacts, and that has the potential to result in deleterious effects, especially where those effects may be widespread, long lasting or severe." The amendments prohibit Contracting Parties from allowing "the placement of matter into the sea" for the purpose of conducting any listed marine geoengineering activity, unless the placement is authorized under a permit. The amendments include a new annex that currently lists only ocean fertilization activities as requiring a "placement" permit. Under the amendments, such a permit may be issued only for ocean fertilization involving "legitimate scientific research." It is expected that other marine geoengineering activities will be listed in the future. The amendments would enter into force after two-thirds of the Contracting Parties accept them. The United States has

signed but not ratified the 1996 Protocol. The United States is a party to the London Convention.

## 5 . Fish and Marine Mammals

### ***a. Transmittal of the amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries***

On April 22, 2013, President Obama transmitted to the U.S. Senate for advice and consent to ratification the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries. Daily Comp. Pres. Docs., 2013 DCPD No. 00265, p. 1. The President's message to the Senate with the transmittal follows.

\* \* \* \*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (the "Convention"), adopted on September 28, 2007, at the twenty-ninth Annual Meeting of the North Atlantic Fisheries Organization (NAFO). I also transmit, for the information of the Senate, the report of the Secretary of State on the Amendment, which includes an article-by-article analysis.

The Amendment serves to bring the Convention in line with modern international fisheries governance, including revisions to its decisionmaking and objection rules and a new comprehensive dispute settlement procedure. The Amendment also reflects changes to the budget contribution scheme that are expected to significantly reduce U.S. annual payments to NAFO. Involved Federal agencies and stakeholders strongly support the proposed changes to the Convention. The strengthened Convention will improve the way NAFO manages the fish stocks under its purview and enforces compliance with the measures it adopts, which in turn will improve the chances that key stocks in the Northwest Atlantic will recover enough to support resumed fishing.

The recommended changes to the Northwest Atlantic Fisheries Convention Act of 1995 necessary to implement the Amendment will be submitted separately to the Congress. I therefore recommend that the Senate give favorable consideration to the Amendment to the Convention and give its advice and consent to ratification at the earliest possible date.

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### ***b. Transmittal of Convention on Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean***

Also on April 22, 2013, President Obama transmitted to the U.S. Senate for advice and consent the Convention on the Conservation and Management of High Seas Fisheries

Resources in the North Pacific Ocean. Daily Comp. Pres. Docs., 2013 DCPD No. 00264, p. 1. President Obama's transmittal message follows.

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With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, done at Tokyo on February 24, 2012, and signed by the United States on May 2, 2012 (the "Convention"). I also transmit, for the information of the Senate, the report of the Secretary of State on the Convention that includes an article-by-article analysis.

The Convention establishes a regional fisheries management organization through which Parties will cooperate to ensure the long-term conservation and sustainable use of the fisheries resources in the high seas of the North Pacific Ocean while protecting the marine ecosystems in which these resources occur.

The Convention will require implementing legislation, which is being drafted and will be submitted separately to the Congress for its consideration.

Cooperation under the Convention will address fisheries resources not covered under preexisting international fisheries management instruments and will help to prevent destructive fishing practices on the high seas that may have impacts on fisheries resources in areas subject to U.S. jurisdiction. Ratification by the United States would also ensure that future U.S. fisheries interests in the region subject to the Convention will be factored into allocation decisions. I therefore recommend that the Senate give favorable consideration to the Convention and give its advice and consent to ratification at the earliest possible date.

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**c. *Transmittal of Convention on Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean***

Also on April 22, 2013, President Obama transmitted to the Senate for its advice and consent the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean Convention. Daily Comp. Pres. Docs., 2013 DCPD No. 00266, p. 1. President Obama's message to the Senate follows.

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I transmit herewith the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (the "Convention"), done at Auckland, New Zealand, November 14, 2009, with a view to receiving the advice and consent of the Senate to ratification. I also transmit, for the information of the Senate, the report of the Secretary of State on the Convention that includes an article-by-article analysis.

The Convention establishes a regional fisheries management organization through which Parties will give effect to their duty to cooperate in the conservation and sustainable use of the

high seas fishery resources in the South Pacific Ocean and to safeguard the marine ecosystems in which these resources occur.

The Convention requires Parties to apply specific conservation and management principles and approaches in giving effect to the objective of the Convention. These principles and approaches are enshrined in existing international instruments to which the United States is a party, such as the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of December 4, 1995. In addition, the Convention requires that Parties design and adopt specific conservation and management measures, such as limitations on catch or effort, time or area closures, and gear restrictions.

The Department of State, Department of Commerce, U.S. Coast Guard, and relevant U.S. stakeholders strongly support the Convention. The legislation necessary to implement the Convention will be submitted separately to the Congress for its consideration. I therefore recommend that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification.

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**d. *CITES new framework on introduction from the sea***

At the 16<sup>th</sup> Conference of the Parties (CoP16) to the Convention on International Trade in Endangered Species (“CITES”) in March 2013, the Parties adopted a new framework for implementation of CITES provisions on “introduction from the sea.” CITES Resolution Conf. 14.6 (Rev. CoP16). “Introduction from the sea” refers to the taking of CITES-listed species from a marine area beyond the jurisdiction of any State (*e.g.*, the high seas) and transporting them into a State. The U.S. National Oceanic and Atmospheric Administration (“NOAA”) within the Department of Commerce published a fact sheet on the new framework, available at [www.nmfs.noaa.gov/ia/agreements/global\\_agreements/cites\\_page/cites.pdf](http://www.nmfs.noaa.gov/ia/agreements/global_agreements/cites_page/cites.pdf). The NOAA fact sheet hails the CITES resolution on introduction from the sea: “This new framework will provide certainty and consistency regarding which CITES documents are issued and which Party is responsible for issuing these documents. It is a pragmatic and effective permitting scheme for CITES specimens taken on the high seas.” The fact sheet continues:

Within the new framework, if a vessel harvests CITES-listed specimens on the high seas and delivers them to the same country in which it is flagged, Parties will treat the transaction as an introduction from the sea and issue an introduction-from-the-sea certificate. Under this scenario, there is only one country involved...

If there is more than one country involved in the trade (the vessel that harvests the specimens delivers them to a country other than the country to which it is flagged), CITES Parties will treat the transaction as an export and

require the issuance of an export permit by the country to which the harvesting vessel is flagged....

...A narrow exception, to accommodate some chartering arrangements, was incorporated into the new framework. Under the exception, when one country charts a vessel flagged to another country and that vessel harvest CITES-listed specimens on the high seas, the two countries involved could reach an agreement to allow the country that chartered the vessel to issue an introduction-from-the-sea certificate...

**e. *CITES amendments to include marine species***

Also at CITES CoP16 in March 2013, the United States joined other countries in a successful effort to amend CITES to include several shark species in the list of species covered by Appendix II. The shark species are commercially harvested for their fins and/or meat. With the addition to Appendix II, these species can only be traded with CITES permits and with evidence that they are harvested sustainably and legally. The CITES news release on the conclusion of the meeting is available at [www.cites.org/eng/news/pr/2013/20130314\\_cop16.php](http://www.cites.org/eng/news/pr/2013/20130314_cop16.php).

**f. *Sea turtle conservation and shrimp imports***

The Department of State makes annual certifications related to conservation of sea turtles, consistent with § 609 of Public Law 101-162, 16 U.S.C. § 1537, which prohibits imports of shrimp and shrimp products harvested with methods that may adversely affect sea turtles. On May 2, 2013, the Department of State made its annual certifications related to conservation of sea turtles, certifying that 13 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 26 other countries and one economy do not pose a threat of the incidental taking of sea turtles protected under Section 609. As excerpted below, the Federal Register notice announcing the State Department's May 2 certifications explained the Department's determinations and the applicable legal framework. 78 Fed. Reg. 45,285 (July 26, 2013).

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On May 2, 2013, the Department certified 13 nations on the basis that their sea turtle protection programs are comparable to that of the United States: Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Nigeria, Pakistan, Panama, and Suriname. The Department also certified 26 shrimp harvesting nations and one economy as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are:

Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Ten nations and one economy only harvest shrimp using small boats with crews of fewer than five that use manual rather than mechanical means to retrieve nets, or catch shrimp using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The 10 nations and one economy are: the Bahamas, Belize, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru, Sri Lanka, and Venezuela.

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In order for shrimp harvested with turtle excluder devices (TEDs) in an uncertified nation or economy to be eligible for importation into the United States under the DS-2031 section 7(A)(2) provision for “shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States,” the Department of State must determine in advance that the government of the harvesting nation or economy has put in place adequate procedures to ensure the accurate completion of the DS-2031 forms. At this time, the Department has made such a determination only with respect to Australia, Brazil and France. Thus, the importation of TED-caught shrimp from any other uncertified nation or economy will not be allowed...

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## **C. OTHER CONSERVATION ISSUES**

### **1. Wildlife Trafficking**

On July 1, 2013, President Obama issued Executive Order 13648 on Combating Wildlife Trafficking. 78 Fed. Reg. 40,621 (July 5, 2013). Sections 2, 3, and 4 of the Order establish and describe the Presidential Task Force on Wildlife Trafficking (“Task Force”), an interagency group charged with developing a National Strategy for Combating Wildlife Trafficking. Section 5 of the Order calls for the creation of an Advisory Council on Wildlife Trafficking (“Advisory Council”) to assist the Task Force. Section 1 of the Order, set forth below, describes U.S. government policy with respect to wildlife trafficking.

\* \* \* \*

The poaching of protected species and the illegal trade in wildlife and their derivative parts and products (together known as “wildlife trafficking”) represent an international crisis that continues to escalate. Poaching operations have expanded beyond small-scale, opportunistic actions to coordinated slaughter commissioned by armed and organized criminal syndicates. The survival of protected wildlife species such as elephants, rhinos, great apes, tigers, sharks, tuna, and turtles has beneficial economic, social, and environmental impacts that are important to all nations. Wildlife trafficking reduces those benefits while generating billions of dollars in illicit revenues each year, contributing to the illegal economy, fueling instability, and undermining security. Also, the prevention of trafficking of live animals helps us control the spread of

emerging infectious diseases. For these reasons, it is in the national interest of the United States to combat wildlife trafficking.

In order to enhance domestic efforts to combat wildlife trafficking, to assist foreign nations in building capacity to combat wildlife trafficking, and to assist in combating transnational organized crime, executive departments and agencies (agencies) shall take all appropriate actions within their authority, including the promulgation of rules and regulations and the provision of technical and financial assistance, to combat wildlife trafficking in accordance with the following objectives:

(a) in appropriate cases, the United States shall seek to assist those governments in anti-wildlife trafficking activities when requested by foreign nations experiencing trafficking of protected wildlife;

(b) the United States shall promote and encourage the development and enforcement by foreign nations of effective laws to prohibit the illegal taking of, and trade in, these species and to prosecute those who engage in wildlife trafficking, including by building capacity;

(c) in concert with the international community and partner organizations, the United States shall seek to combat wildlife trafficking; and

(d) the United States shall seek to reduce the demand for illegally traded wildlife, both at home and abroad, while allowing legal and legitimate commerce involving wildlife.

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The White House released a fact sheet, available at [www.whitehouse.gov/the-press-office/2013/07/01/fact-sheet-us-efforts-combat-wildlife-trafficking](http://www.whitehouse.gov/the-press-office/2013/07/01/fact-sheet-us-efforts-combat-wildlife-trafficking), announcing the Executive Order and summarizing other actions to address wildlife trafficking. Among those actions described in the fact sheet is the use of the Transnational Organized Crime Rewards Program to combat perpetrators of wildlife trafficking. For a discussion of the first reward offer relating to a transnational criminal organization involved in wildlife trafficking, see Chapter 3.B.4.a.

On July 2, 2013, the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") welcomed the issuance of the U.S. Executive Order on Combating Wildlife Trafficking. See CITES news release, available at [www.cites.org/eng/news/pr/2013/20130702\\_us\\_eo.php](http://www.cites.org/eng/news/pr/2013/20130702_us_eo.php).

On July 29, 2013, the first meeting of the Task Force established by E.O. 13,648 convened at the State Department. As described in a State Department media note available at <http://www.state.gov/r/pa/prs/ps/2013/07/212551.htm>, the meeting included Robert D. Hormats, Under Secretary of State for Economic Growth, Energy and the Environment; Robert G. Dreher, Acting Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice; Daniel M. Ashe, Director of the U.S. Fish and Wildlife Service of the Department of the Interior; and representatives from 18 other U.S. government agencies.

## 2. ILC Work on Transboundary Aquifers

On October 22, 2013, Governor Ted Strickland, senior adviser for the U.S. Mission to the UN, delivered remarks at the U.N. General Assembly Sixth Committee's discussion of the

work of the International Law Commission ("ILC") on the law of transboundary aquifers. Governor Strickland's remarks are excerpted below and are available in full at <http://usun.state.gov/briefing/statements/215758.htm>.

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The United States continues to believe that the International Law Commission's work on transboundary aquifers has constituted an important advance in providing a possible framework for the reasonable use and protection of underground aquifers, which are playing an increasingly important role as water sources for human populations. For all states, and especially those struggling to cope with pressures on transboundary aquifers, the Commission's effort to develop a set of flexible tools for using and protecting these aquifers has been a very useful contribution.

With respect to next steps, there is still much to learn about transboundary aquifers in general. Specific aquifer conditions and state practices vary widely. Moreover, many aspects of the draft articles clearly go beyond current law and practice. For these reasons, the United States continues to believe that context-specific arrangements provide the best way to address pressures on transboundary groundwaters in aquifers, as opposed to refashioning the draft articles into a global framework treaty or into principles. States concerned should take into account the provisions of these draft articles when negotiating appropriate bilateral or regional arrangements for the proper management of transboundary aquifers.

Numerous factors might appropriately be taken into account in any specific negotiation, such as hydrological characteristics of the aquifer at issue; present uses and expectations regarding future uses; climate conditions and expectations; and economic, social and cultural considerations. These factors will vary in each particular set of circumstances, and maintaining the articles as a resource in draft form seems to us the best way of ensuring that the draft articles will be a useful resource for states in all circumstances.

If the draft articles were fashioned into a global convention or principles, we remain unconvinced that they would garner sufficient support. We also note that the draft articles seem to cover some waters that are already within the scope of the 1997 Watercourses Convention, such that the existence of two overlapping framework conventions could lead to confusion.

Instead, we would support commending the draft articles to the attention of governments, and encouraging states concerned to make appropriate bilateral or regional agreements or arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the draft articles.

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**Cross references**

*Wildlife trafficking*, **Chapter 3.B.5.**

*Constitutionality of MARPOL amendment*, **Chapter 4.B.2.**

*Human rights and the environment*, **Chapter 6.E.**

*ILC's work protection of the atmosphere*, **Chapter 7.D.1.**

*ILC's work on protection of the environment in relation to armed conflict*, **Chapter 7.D.3.**

*Addressing aviation impacts on climate change*, **Chapter 11.A.3.**

*Environmental cooperation agreement with Colombia*, **Chapter 11.D.1.c.**